

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

JOHNNY TURNER

PETITIONER

V.

NO. 1:20-CV-00105-SA-JMV

SUP. RONALD KING and ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI, LYNN FITCH

RESPONDENTS

ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Petitioner Johnny Turner has submitted a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. Doc. # 1. The petitioner was convicted and sentenced on methamphetamine-related charges in the Circuit Court of Oktibbeha County, Mississippi. Turner has filed at least one other unsuccessful § 2254 petition concerning the same conviction which he now seeks to challenge. *See Turner v. Superintendent Johnny Denmark*, No. 1:14-cv-00198-SA-SAA; *Turner v. State of Mississippi, et al.*, 1:09-cv-00249-SA-JAD.

The Antiterrorism and Effective Death Penalty Act requires that before a district court considers a second or successive petition, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Turner has failed to obtain such authorization. Rather than dismissing Turner’s petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).

Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

- 1) That this petition shall be **TRANSFERRED** to the Fifth Circuit Court of Appeals for the

petitioner to seek permission to file his successive § 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365;

3) That Turner's pending motion to proceed *in forma pauperis* [3] is **dismissed as moot**; and

4) That this case is **CLOSED**.

This, the 27th day of May, 2020.

/s/ Sharion Aycock

**UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF MISSISSIPPI**